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No. 80-2088

In the
Supreme Court of the United States
October Term, 1980

LEODA WREN, et al.,
Petitioners,
vs.
NOLAN JONES, et al.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONERS' SUPPLEMENTAL MEMORANDUM

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PETITIONERS' SUPPLEMENTAL MEMORANDUM

Respondents' supplemental memorandum points out that the recent opinion of the Seventh Circuit in *Nekolny* v. *Painter* reverses the anti-*Mt. Healthy* position which that court had previously taken in the present case and in *McGill* v. *Board of Ed. of Pekin Elementary School Dist.*, 602 F.2d 774 (7th Cir. 1979). Now, respondents say, there is "no need . . . to correct the Seventh Circuit . . . ." (Supp.Mem. 2)

Respondents misconceive the issue, which is whether courts across the country which are struggling with the multiple extant versions of the *Mt. Healthy* rule shall

receive an authoritative statement which clarifies the conflicting motivation and burden shift notions that are currently confusing this kind of First Amendment litigation. The hash the Seventh Circuit made out of these concepts in the opinion below is a good example of the national muddle. *Mt. Healthy's* outlines have been scraped away like the back of a major league batter's box by the fourth inning. See the 156 *Mt. Healthy* cases collected at pages 62-72 of our appendix.

The anti-*Mt. Healthy* rule is still alive in the Seventh Circuit. *Nekolny* does not overrule or even mention the present case or *McGill*. More muddle.

Another petition for certiorari praying clarification of the *Mt. Healthy* rule is now pending. *Bullard Independent School Dist.* v. *Brown*, No. 80-2000.

Our petition for certiorari contained an erroneous citation. At page 21 we said "Rhoads admitted at trial there was no justification for what he did." The correct record citation for that statement is CA 49 A11-A12.

Respectfully submitted,

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